

§ 15A-1469. Postcommission three-judge panel.

(a) If the Commission concludes or the district attorney and the convicted person's counsel agree pursuant to G.S. 15A-1468(f), there is sufficient evidence of factual innocence to merit judicial review, the Chair of the Commission shall request the Chief Justice to appoint a three-judge panel, not to include any trial judge that has had substantial previous involvement in the case, and issue commissions to the members of the three-judge panel to convene a special session of the superior court of the original jurisdiction to hear evidence relevant to the Commission's recommendation. The senior judge of the panel shall preside. The Chief Justice shall appoint the three-judge panel within 20 days of the filing of the Commission's opinion finding sufficient evidence of factual innocence to merit judicial review.

(a1) If the Commission concludes that there is credible evidence of prosecutorial misconduct in the case, the Chair of the Commission may request the Attorney General to appoint a special prosecutor to represent the State in lieu of the district attorney of the district of conviction or the district attorney's designee. The request for the special prosecutor shall be made within 20 days of the filing of the Commission's opinion finding sufficient evidence of innocence to merit judicial review.

Upon receipt of a request under this subsection to appoint a special prosecutor, the Attorney General may temporarily assign a district attorney, assistant district attorney, or other qualified attorney, to represent the State at the hearing before the three-judge panel. However, the Attorney General shall not appoint as special prosecutor any attorney who prosecuted or assisted with the prosecution in the trial of the convicted person, or is a prosecuting attorney in the district where the convicted person was tried. The appointment shall be made no later than 20 days after the receipt of the request.

(b) The senior resident superior court judge in the district of original jurisdiction shall enter an order setting the case for hearing at the special session of superior court for which the three judge panel is commissioned and shall require the State to file a response to the Commission's opinion within 90 days of the date of the order. Such response, at the time of original filing or through amendment at any time before or during the proceedings, may include joining the defense in a motion to dismiss the charges with prejudice on the basis of innocence.

(b1) The Commission's entire file, including files obtained from other agencies, shall be unencumbered by protective orders when transferred to the district attorney and defense counsel pursuant to subsection (g) of this section, unless either of the following apply:

- (1) The district attorney and defense counsel have consented to a protective order over a portion of the file.
- (2) The district attorney and defense counsel have been given an opportunity to be heard by the senior judge of the three-judge panel before a protective order is issued.

(c) The district attorney of the district of conviction, or the district attorney's designee, shall represent the State at the hearing before the three-judge panel, except as otherwise provided by this section.

(d) The three-judge panel shall conduct an evidentiary hearing. At the hearing, the court, and the defense and prosecution through the court, may compel the testimony of any witness, including the convicted person. All credible, verifiable evidence relevant to the case, even if considered by a jury or judge in a prior proceeding, may be presented during the hearing. The convicted person may not assert any privilege or prevent a witness from testifying. The convicted person has a right to be present at the evidentiary hearing and to be represented by counsel. A waiver of the right to be present shall be in writing.

(e) The senior resident superior court judge in the district of original jurisdiction shall determine the convicted person's indigency status and, if appropriate, enter an order for the appointment of counsel by Indigent Defense Services. If the convicted person has requested a

specific attorney with knowledge of the case, the Director shall inform Indigent Defense Services of that request for their consideration. The court may also enter an order relieving an indigent convicted person of all or a portion of the costs of the proceedings.

(f) The clerk of court shall provide written notification to the victim 30 days prior to any case-related hearings.

(g) Upon the motion of either party, the senior judge of the panel may direct the attorneys for the parties to appear before him or her for a conference on any matter in the case.

(h) The three-judge panel shall rule as to whether the convicted person has proved by clear and convincing evidence that the convicted person is innocent of the charges. Such a determination shall require a unanimous vote. If the vote is unanimous, the panel shall enter dismissal of all or any of the charges. If the vote is not unanimous, the panel shall deny relief.

(i) A person who is determined by the three-judge panel to be innocent of all charges and against whom the charges are dismissed pursuant to this section is eligible for compensation under Article 8 of Chapter 148 of the General Statutes without obtaining a pardon of innocence from the Governor. (2006-184, s. 1; 2010-171, ss. 1, 5; 2012-7, s. 8; 2016-73, s. 5.)